

CALENDAR ITEM

104

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02/22/13

PRC 5467.1

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G. Kato

CONSIDER TERMINATION OF LEASE NO. PRC 5467.1, A GENERAL LEASE – COMMERCIAL USE, OF SOVEREIGN LAND LOCATED ON AND ADJACENT TO SAN FRANCISCO BAY, IN THE CITY OF BURLINGAME, SAN MATEO COUNTY; FOR A FLOATING RESTAURANT AND APPURTENANT FACILITIES, PARKING LOT AND PUBLIC ACCESS AMENITIES; AND AUTHORIZATION FOR THE STAFF OF THE CALIFORNIA STATE LANDS COMMISSION AND/OR THE OFFICE OF THE ATTORNEY GENERAL TO TAKE ALL STEPS NECESSARY, INCLUDING LITIGATION, TO EJECT FRANK M. COXE, LLC FROM THE LEASE PREMISES; TO RECOVER RENTS, TRESPASS DAMAGES AND/OR OTHER AMOUNTS AS MAY BE DUE UNDER THE LEASE; TO CAUSE THE REMOVAL OF THE VESSEL, GANGWAY, PILINGS AND OTHER RESTAURANT-RELATED IMPROVEMENTS FROM THE LEASE PREMISES, INCLUDING RESTORATION OF LEASE PREMISES TO THE SATISFACTION OF THE COMMISSION; AND TO TAKE SUCH OTHER ACTIONS AS ARE REASONABLY REQUIRED OR MAY BE NECESSARY.

APPLICANT:

Frank M. Coxe, LLC
816 E. 4th Street
San Mateo, CA 94401

AREA, LAND TYPE, AND LOCATION:

Filled and unfilled sovereign land in the city of Burlingame, San Mateo County.

AUTHORIZED USE:

Operation of a floating restaurant and appurtenant facilities, parking lot, and public access amenities.

CURRENT LEASE TERM:

10 years, beginning October 19, 2012; ending October 18, 2022, unless sooner terminated as provided under this lease.

CONSIDERATION:

\$10,170 per year, with annual CPI adjustments commencing on the fourth year of the lease term.

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SPECIFIC LEASE PROVISIONS:

Insurance: \$2,000,000

Bond: In lieu of \$500,000 bond, Lessee to provide Lessor with an executed guaranty from Maxim Commercial Capital LLC to guarantee unconditional removal of the vessel, the Frank M. Coxe, from its current location within 90 days of the Commission action finding the lease to be in default and authorizing removal of said vessel.

Other: Non-refundable pre-payment of three years of rent.

OTHER PERTINENT INFORMATION:

1. On October 19, 2012, the California State Lands Commission (Commission) authorized the issuance of a 10-year lease to Frank M. Coxe, LLC for the operation and maintenance of a floating restaurant and appurtenant facilities, parking lot, and public access amenities on sovereign land adjacent to San Francisco Bay, in the city of Burlingame, San Mateo County.
2. The Lease specifically provided for several special provisions to protect the State's interest and assure that adequate remedies were available to the State in the event of Lessee's non-performance under the Lease, including but not limited to:
 - a. In lieu of \$500,000 bond, Lessee to provide to Lessor with an executed guaranty from Maxim Commercial Capital LLC to guarantee unconditional removal of the vessel, the Frank M. Coxe, from its current location within 90 days of the Commission action finding the lease to be in default and authorizing removal of said vessel;
 - i. Lessee to provide executed guaranty from Maxim Commercial Capital LLC to Lessor by November 1, 2012 or the Lessee is considered to be in default of the terms of the lease;
 - b. Lessee to maintain a contract from a reputable, licensed, bonded tug boat company to remove the vessel, Frank M. Coxe, from the lease premises. Contract must remain in effect throughout the lease term and any holding over period. Vessel may not be towed to any area under the jurisdiction of the State, including granted lands;
 - c. Lessee shall pre-pay three years of annual rent within 30 days of Commission authorization of lease (November 19, 2012). If payment of

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rent is not received within 30 days, the Lessee will be considered to be in breach of the terms of the lease;

- d. Lessee to provide evidence of insurance coverage
3. Staff has been in communication with Frank M. Coxe, LLC to advise of unmet lease provisions on several occasions, including, but not limited to written correspondence on November 15, 2012 and a default notice letter on December 18, 2012.
4. As of January 30, 2013, Frank M. Coxe, LLC has not met any of the lease provisions outlined above.
5. On January 25, 2013, staff of the Commission sent a letter to Frank M. Coxe, LLC advising of unauthorized use of the lease premises. Staff understands that Mr. Lloyd Bothwell, acting for the Lessee, entered into a contract with Event Parkerz LLC to park the overflow of Hertz cars on the lease premises. This activity was not authorized by the Commission and is not an activity authorized under the lease.
6. The staff recommends that the Commission find that the termination of lease and authorization for litigation for trespass and ejection do not have a potential for resulting in either a direct or a reasonably foreseeable indirect physical change in the environment, and are, therefore, not projects in accordance with the California Environmental Quality Act (CEQA).

Authority: Public Resources Code section 21065 and California Code of Regulations, Title 14, sections 15060, subdivision (c)(3), and 15378.

EXHIBITS:

- A. Land Description
- B. Site and Location Map

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that the termination of lease and authorization for litigation for trespass and ejection are not subject to the requirements of CEQA pursuant to California Code of Regulations, Title 14, section 15060, subdivision (c)(3), because the subject activity is not a project as defined

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by Public Resources Code section 21065 and California Code of Regulations, Title 14, section 15378.

AUTHORIZATION:

1. Find that Frank M. Coxe, LLC, is in default of Lease No. PRC 5467.1 for: failure to provide an executed guaranty from Maxim Commercial Capital LLC to Lessor; failure to maintain a contract from a reputable, licensed, bonded tug boat company for removal of the subject vessel; failure to pay rent as provided in lease, and failure to provide evidence of insurance coverage.
2. Authorize staff of the Commission to issue a Notice of Termination of Lease No. PRC 5467.1, a General Lease – Commercial Use issued to Frank M. Coxe, LLC.
3. Authorize staff of the Commission and the Office of the Attorney General to take all necessary steps, including litigation to: 1) eject Frank M. Coxe, LLC; and recover trespass damages 2) seek removal of all restaurant-related improvements from the lease premises; 3) restore lease premises to the satisfaction of the Commission; and 4) recover rents due under the lease term.

EXHIBIT A

PRC 5467.1

LAND DESCRIPTION

A parcel of land conveyed to the State of California by Anza Pacific Corporation under Boundary Line Agreement 131, situate in the City of Burlingame, County of San Mateo, State of California, lying adjacent to the San Francisco Bay and more particularly described as follows:

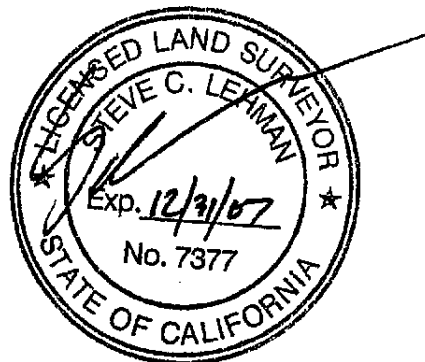
Parcel 5 as described in that Grant Deed recorded July 13, 1972 in Book 6198 at Page 76 of official records of the County of San Mateo.

EXCEPTING THEREFROM that portion of Lot 7 as shown on that map of Anza Airport Park Unit No. 6 recorded February 27, 1973 in Book 70 of maps at Page 33 of official records of the County of San Mateo and more particularly described as follows:

BEGINNING at the southwest corner of Lot 7, thence along the West line of said Lot 7 $N02^{\circ}25'31''W$ 359.50 feet to the northwest corner of said lot, thence along the North line of said lot $N89^{\circ}43'01''E$ 35.89 feet to a point on said North line, thence leaving said North line $S00^{\circ}17'00''E$ 358.80 feet to a point on a non-tangent curve having a radius of 643.50 feet from which a radial line bears $S00^{\circ}25'32''E$, said point also being on the South line of said Lot 7, thence westerly along said South line 22.46 feet along said curve through a central angle of $1^{\circ}29'59''$ to the POINT OF BEGINNING.

END OF DESCRIPTION

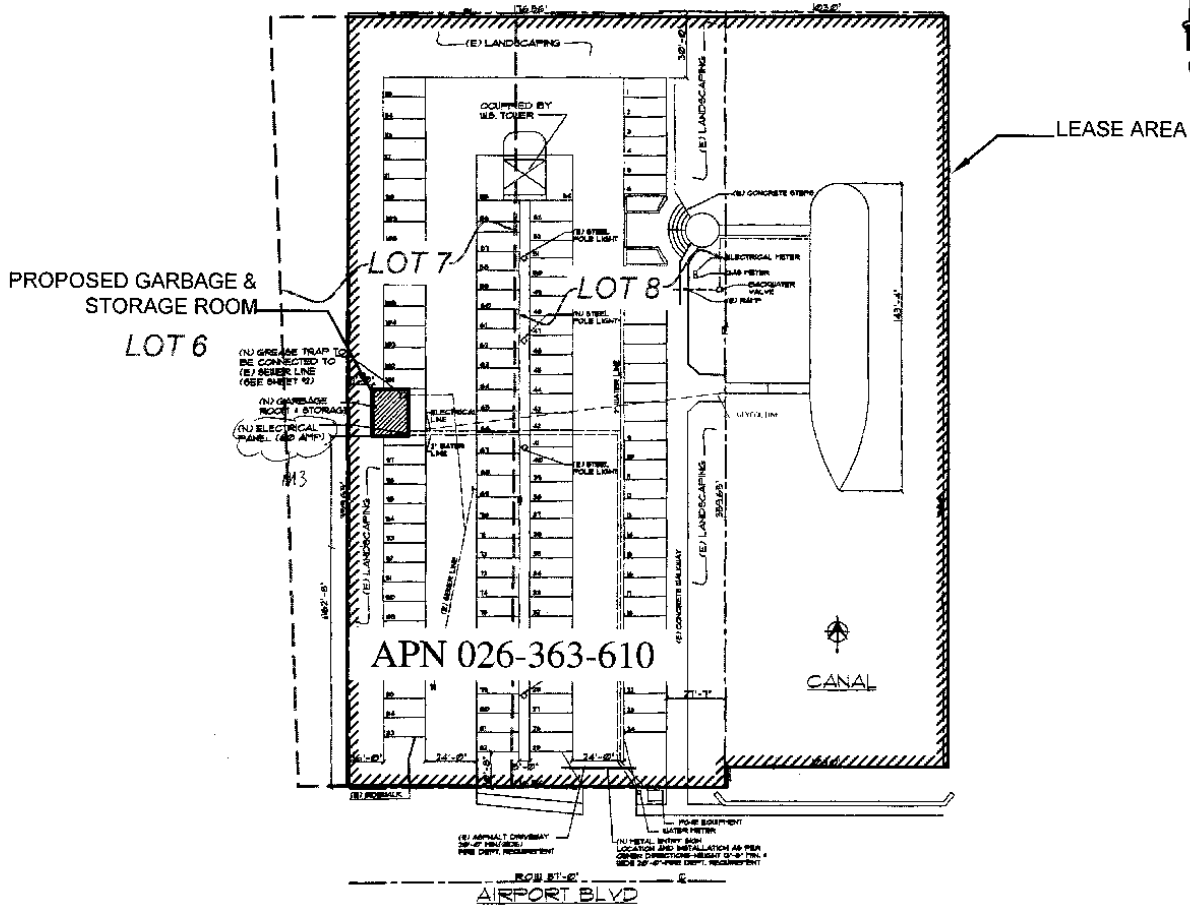
Prepared by the California State Lands Commission Boundary Unit November 19, 2007.



NO SCALE

SITE

San Francisco Bay



410 AIRPORT BLVD.

NO SCALE

LOCATION



Exhibit B

PRC 5467.1
 FRANK M. COXE LLC.
 GENERAL LEASE -
 COMMERCIAL USE
 SAN MATEO COUNTY



This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.